

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on February 13, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 546, 2/10/2003; HB 553,  
2/10/2003; HB 540, 2/10/2003  
Executive Action: HB 390; HB 358; HB 546; HB 430

**HEARING ON HB 546**

**Sponsor:** REP. PAT WAGMAN, HD 93, Hobson

**Opening Statement by Sponsor:**

REP. WAGMAN opened on HB 546. He stated that this bill would increase the maximum incarceration period for failure to provide child support for six months from two to ten years.

**EXHIBIT**(juh32a01)

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 88}***

**Proponents' Testimony:**

**Carlene Sowell**, supported HB 546. She stated that she was divorced with three children. Her husband, a self-employed stone mason, was ordered to pay \$663 per child, per month. She stated he only paid \$500 a month in child support. She stated that she had few working skills and that she eventually found a minimum wage job with a travel agency. She stated that she wound up with a lot of credit card debt in order to survive and that she drained her kids' savings accounts.

***{Tape: 1; Side: A; Approx. Time Counter: 89 - 117}***

**REP. PARKER** supported HB 546 in his role as Cascade County, Deputy County Attorney. He felt that the number one goal with this bill is to get the parent to begin paying their child support. He emphasized they do not want these people in prison, unable to work, but rather they want them to support their children.

***{Tape: 1; Side: A; Approx. Time Counter: 118 - 219}***

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. FACEY** asked whether person could be arrested and put in jail for 24 hours to get their attention. **REP. PARKER** responded that the only time he would go after jail time would be in the most heinous of offenses. He emphasized that law enforcement does not want these people to lose their jobs.

***{Tape: 1; Side: A; Approx. Time Counter: 220 - 278}***

**Closing by Sponsor:**

REP. WAGMAN closed on HB 546.

**HEARING ON HB 553**

**Sponsor:** REP. DAVE GALLIK, HD 52, Helena

**Opening Statement by Sponsor:**

REP. GALLIK opened on HB 553. He stated that this bill would address part of the extreme need for increased penalties for cruelty to animals. He stated that it provides for payment, through a bonding process, for the care of animals seized from an owner convicted of cruelty to animals. He mentioned that this bill is in response to Camp Collie and other incidents involving cruelty to animals in Montana. He stressed that HB 553 offers new sections to protect veterinarians, establish bonding, and provide expanded exemptions. He stated that some of the exemptions include the humane destroying of animals for just cause, certain agriculture practices, rodeos, hunting, wildlife management, and scientific research. He stated that he is not an expert in this field; that others who are experts would address the bill.

***{Tape: 1; Side: A; Approx. Time Counter: 279 - 409}***

**Proponents' Testimony:**

Anita Verona, Chair, Lewis and Clark Commission, supported HB 553. She stated her concern that this bill comes up every session without passing. She stressed that the fiscal impact would be on the animal owner convicted of cruelty to animals. She stressed that this bill is about humane care, protecting veterinarians, and making offenders accountable.

***{Tape: 1; Side: A; Approx. Time Counter: 410 - 464}***

Dave Pauley, Director Animal Control, Billings, supported HB 553. He stated that this bill is important to Montana. He stressed the exorbitant costs of housing and caring for confiscated animals, and the huge budgetary concerns. He stressed that this bill would put the costs on the owners, protect veterinarians, and increase penalties for animal cruelty.

**EXHIBIT (juh32a02)**

**EXHIBIT (juh32a03)**

**EXHIBIT (juh32a04)**

**EXHIBIT(juh32a05)**

**EXHIBIT(juh32a06)**

***{Tape: 1; Side: A; Approx. Time Counter: 465 - 512}***

**Gina Wiest, Manager, Lewis and Clark County Humane Society,** supported HB 553. She stated that she has been involved in four large-scale animal cruelty cases over the past eight years. One case involved 15 starving horses near Unionville. She stated that the costs of housing the horses from June, 1997 to March, 1998 cost the Lewis and Clark County Humane Society \$9,000. She stated that another case involved 53 neglected dogs costing \$17,000. She stated that 36 of the 53 dogs were eventually adopted out. She stated that the most current case is Camp Collie in Shelby, in which the Lewis and Clark Humane Society has assisted in the care of 172 dogs and cats at a cost of \$5,540. She explained that when the court orders restitution, it is difficult to collect. She emphasized that the Humane Society currently has thousands of restitution dollars owed to them from prior cases.

**EXHIBIT(juh32a07)**

**Valerie Wilson, Attorney, Jefferson County,** supported HB 553. She stated that she represented the State last year in an animal cruelty case involving the 53 neglected dogs. She stated this bill would create bonding requirements and increase penalties for animal cruelty cases.

***{Tape: 1; Side: B; Approx. Time Counter: 1 - 119}***

**Tia Nelson, Veterinarian, Helena,** supported HB 553. She stated that she has been involved in animal cruelty cases. She stated this bill would protect veterinarians if they offer care or recommend euthanasia in a cruelty case.

***{Tape: 1; Side: B; Approx. Time Counter: 120 - 151}***

**Linda Hughes, Director Cascade County Humane Society,** supported HB 553. She was involved with Camp Collie and other animal cruelty cases. She stated that the Cascade County Humane Society has over \$50,000 in uncollected restitution fees. She is also involved in a program which helps house animals belonging to women who have to go to a battered women's shelter. She explained that abused children are likely to abuse animals. She stated that this bill would help cut the chain of abuse.

**Jane Heath, Helena,** supported HB 553. She stated that she owns Circle of Life Equine Therapy. She stated that she travels about 30,000 miles a year and feels that most people love and take care of their animals. She emphasized that this bill addresses those few instances where people do not take care of their animals.

***{Tape: 1; Side: B; Approx. Time Counter: 152 - 219}***

**Ethyl Keel, Manager, Ravalli County Animal Shelter,** supported HB 553. She stated that this bill would remedy current inadequacies of the law and make her job easier.

***{Tape: 1; Side: B; Approx. Time Counter: 220 - 268}***

**Dorothea Sperline, AKC Dog Breeder, Helena,** supported HB 553.

**Susan Cecrle, Lewis and Clark, Animal Control Center, Helena,** supported HB 553. She stated that this bill would take the financial burden off of the taxpayers and place it on the pet owners.

***{Tape: 1; Side: B; Approx. Time Counter: 269 - 359}***

**Kelly Kuntz, Michael Kellner Foundation,** supported HB 553. He stated that this bill would give the authorities the tools necessary to deal with animal cruelty cases and to prosecute the offenders. He urged a do pass.

**Jean Atthowe, Ravalli County, Michael Kellner Foundation,** supported HB 553. She stated that she has visited many communities with the goal of making them whole, complete and happy. She explained that if the animals are treated well, then the people, too, are happy. She stated that communities need responsible animal care control programs.

**EXHIBIT(juh32a08)**

***{Tape: 1; Side: B; Approx. Time Counter: 360 - 468}***

**Curt McAlpine, Retired Animal Control Officer, Helena,** supported HB 553. He stated that he has worked for twenty years with all different sorts of animal cruelty cases. He emphasized that these cases know no economic boundaries.

***{Tape: 1; Side: B; Approx. Time Counter: 469 - 510}***

**Fred "Bud" Wirtz, Helena,** supported HB 553. He stated that this bill would help Montana and he urged a do pass.

**Jane Benson, Helena,** supported HB 553. She stated she has been in Helena for 25 years. She emphasized that people who respect animals will not tolerate the lack of clarity under the current law. She emphasized that this bill would assist in the prosecution of offenders and help shift the costs of care of abused animals from taxpayers to the owners.

**{Tape: 2; Side: A; Approx. Time Counter: 1 - 28}**

**Ganay Johnson, Executive Director Park County Humane Society,** supported HB 553. She stated that she never recovered a dime in restitution. She explained the problem is that deputies in Park County have been instructed to ignore, or to not act upon, animal cruelty cases due to budgetary constraints. She explained that the housing and medical costs for the animals has caused a huge burden on Park County. She felt this bill would go a long way to alleviating many of the current problems.

**{Tape: 2; Side: A; Approx. Time Counter: 29 - 51}**

**Amy Palmer, Helena,** supported HB 553.

**Opponents' Testimony:** None

**Informational Testimony:**

**Barbara Broberg, Lobbyist for Farm Economics, Cutbank.** She stated that she was concerned about people involved in agriculture. She emphasized that some people in Montana keep horses without shelter and they do fine. She felt that calves in travel do get covered with manure and that, in general, when animals travel, it is not pretty. She stated that animals on the road get covered with mud and manure.

**{Tape: 2; Side: A; Approx. Time Counter: 52 - 94}**

**Questions from Committee Members and Responses:**

**REP. RICE** asked about amending the section of the bill requiring specific food. **REP. GALLUS** stated he did not object. **REP. LANGE** asked about getting an immediate effective date. **REP. MALCOLM** voiced concern about the language which states, "snow and ice are not an adequate water source." He stated a lot of horses are on open range and do quite well. He asked that section be amended. The Committee talked about the bonding issues.

**{Tape: 2; Side: A; Approx. Time Counter: 95 - 266}**

**Closing by Sponsor:**

**REP. GALLIK** closed on HB 553. He stated that there are 39 sponsors for this bill. He explained that the bill could be amended to address the Committee's concerns. He stated that the bill's intent is not to infringe on the livestock industry but to stop animal cruelty. He urged a do pass.

**HEARING ON HB 540**

**Sponsor:** **REP. DAVE GALLIK, HD 52, HB 540**

**Opening Statement by Sponsor:**

**REP. GALLIK** opened on HB 540. He stated that this bill would revise laws relating to the selection of trial juries, providing that trial jurors must be selected from a combined list of qualified electors, licensed drivers and holders of Montana identification cards. He stated that some people do not register to vote because they do not want to serve on juries. He stated this bill would provide a better cross section of the community, hence a better jury pool. He explained that there are details which need to be worked out such as implementation.

**{Tape: 2; Side: A; Approx. Time Counter: 267 - 382}**

**{Tape: 2; Side: A; Approx. Time Counter: 383 - 410}**

**Proponents' Testimony:**

**Al Smith, Montana Trial Lawyer's Association (MTLA)**, supported HB 553. He stated that this bill would give the jury pool a broader cross section of the community. He emphasized what Thomas Jefferson believed: that jury trials are the foundations of democracy and keep society in check.

**{Tape: 2; Side: A; Approx. Time Counter: 411 - 438}**

**Opponents' Testimony:**

**Harold Blatney, Montana Association of Counties**, opposed HB 540. He emphasized that getting a data base for driver's license data would be a great step forward. He drew the Committee's attention to Sections 4 and 5 of the bill. He stated that we live in a mobile society and we need to keep up with people and their changes of residence.

**{Tape: 2; Side: A; Approx. Time Counter: 439 - 490}**

**Robert Throessel, Montana Association of Clerk and Recorders,** opposed HB 540.

**Nancy Sweeney, Clerk of District Courts,** opposed HB 540. She stated that the devil is in the details and this bill, though a great idea, would be extremely difficult to implement. She offered a proposed amendment to address page 4, lines 1-3. She stated that the bill strikes the part giving the Clerks of Court the discretion to excuse certain individuals. She felt that language should not be struck from the current law.

*{Tape: 2; Side: B; Approx. Time Counter: 1 - 79}*

**Mike Fellows, Montana Libertarian Party, Missoula,** opposed HB 540.

**EXHIBIT** (juh32a09)

**Informational Testimony:**

**Brenda Nordlund, Department of Justice (DOJ), Helena,** stated that HB 540 is really an information technology (IT) bill. She stated that this bill is about moving technology out of the 1970's. She stated that she is working on an amendment which she will get to the Committee. She explained that at present, the data base is not compatible with other systems. She set forth the proposition that if the IT programs advance, both for the DMV and court administrator's office, there will be a drop in the fiscal note.

*{Tape: 2; Side: B; Approx. Time Counter: 80 - 131}*

**Questions from Committee Members and Responses:**

**REP. NOENNIG** asked Ms. Nordlund what needs to be done to make the systems compatible. **Ms. Nordlund** responded that if the Committee passed HB 540, which would set the standard, then the DMV would update to comply with the law. She stressed that it is up to the legislature to set the standard through the laws. She emphasized it is capable of being done, but that the law must first be passed.

*{Tape: 2; Side: B; Approx. Time Counter: 132 - 205}*

**REP. FACEY** asked whether this bill would be complied with. **Mr. Throessel** responded that the Magistrates and the Clerk and Recorders would build updated systems to comply with the law. He stated if a policy is set to combine jury pool lists from



driver's licenses and registered voters, then IT can design systems to include them in their data base.

***{Tape: 2; Side: B; Approx. Time Counter: 206 - 258}***

**Closing by Sponsor:**

**REP. GALLIK** stated that the judicial system is bedrocked on the right to a jury trial. He stated that the law requires a jury of your peers but at present, a person only gets a jury of registered voters. He emphasized the need to tell the people to work toward the goal of providing a jury of one's peers. He felt frustrated that this bill comes forward session after session with the clamoring of "IT can't do it." He stressed that the legislature must tell IT to work toward the goal of updating the systems to meet current requirements for the judicial system and to get out of the antiquated 1970's.

***{Tape: 2; Side: B; Approx. Time Counter: 249 - 311}***

**EXECUTIVE ACTION ON HB 390**

**Motion:** REP. HARRIS moved that HB 390 DO PASS.

**Motion:** REP. HARRIS moved that HB 390 BE AMENDED.

**Discussion:**

**REP. HARRIS** stated that **REP. GALLIK** could speak on the amendments to the qui tam bill. **REP. GALLIK** stated that the amendments have been inserted into the bill to make it easier for the Committee. He explained that the person who discovered the fraud would first take it to the Attorney General (AG). The AG would have 60 days to decide whether they want to prosecute. If the AG decides not to prosecute, then the citizen may prosecute civilly and recover up to 30 percent. If the AG prosecutes the case, then the person who discovered the fraud would only recover 10-15 percent.

**Vote:** Motion that HB 390 BE AMENDED carried unanimously by voice vote.

**Motion/Vote:** REP. GUTSCHE moved that HB 390 DO PASS AS AMENDED. Motion carried 16-2, by voice vote, with REPS. SALES and STOKER voting no.

***{Tape: 3; Side: A; Approx. Time Counter: 1 - 8}***

**EXECUTIVE ACTION ON HB 358**

**Motion:** REP. GUTSCHE moved that HB 358 DO PASS.

**Motion/Vote:** REP. NOENNIG moved that HB 358 BE AMENDED. Motion carried unanimously, by voice vote.

**Motion/Vote:** REP. FACEY moved that HB 358 DO PASS AS AMENDED. Motion carried 17-1, by voice vote, with REP. RICE voting no.

*{Tape: 3; Side: A; Approx. Time Counter: 9 - 261}*

**EXECUTIVE ACTION ON HB 546**

**Motion:** REP. PARKER moved that HB 546 DO PASS.

**Discussion:**

**CHAIRMAN SHOCKLEY** stated that this bill dealt with people reluctant to pay their child support. **REP. NOENNIG** stated he was confused at the different sentences for different offenders. **REP. PARKER** responded that a lot of that takes place in other sections of the Code. He explained that when a person is convicted under a deferred sentence, the maximum time is usually three years. However, if there is an extensive financial obligation involving restitution, then a sentence could be deferred for six years. He explained that in this bill, the longer a judge can have a hold over the person to pay, the more likely they will be to pay their support obligations. He explained that someone with a prior felony cannot get a deferred sentence, or if they have already had one sentence deferred, they cannot get a second deferred sentence. He stated that this bill would extend the time horizon in which a judge could supervise someone with a prior felony.

*{Tape: 3; Side: A; Approx. Time Counter: 262 - 313}*

**REP. NOENNIG** stated his concern that there is too big a jump in the punishments and he wants to take the penalties in smaller steps. **REP. FACEY** stated this is a good and much needed bill. **REPS. SALES** and **STOKER** stated their concern that if people are locked up, they will not pay anything. **REP. PARKER** stated that locking people up would be rare, and prosecution is only for the most severe cases.

*{Tape: 3; Side: A; Approx. Time Counter: 314 - 441}*

Vote: Motion that HB 546 BE AMENDED carried unanimously by voice vote.

Motion: REP. NOENNIG moved that HB 546 DO PASS AS AMENDED.

Substitute Motion: REP. PARKER moved that HB 546 BE FURTHER AMENDED. (Parker Amendment) Motion carried 14-4, by voice vote, with REPS FACEY, PARKER, RASER and GUTSCHE voting no.

Motion: REP. NOENNIG moved that HB 546 DO PASS AS FURTHER AMENDED.

Substitute Motion/Vote: REP. SHOCKLEY moved that HB 546 BE AMENDED. Motion carried 11-5, by roll call vote, with REPS. EVERETT, FACEY, HARRIS, LANGE, and THOMAS voting no.

Motion/Vote: REP. FACEY moved that HB 546 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

*{Tape: 3; Side: B; Approx. Time Counter: 1 - 284}*

EXECUTIVE ACTION ON HB 430

Motion: REP. HARRIS moved that HB 430 DO PASS.

Discussion:

REP. SALES stated he had three amendments which he would like to have segregated. CHAIRMAN SHOCKLEY agreed that each would be brought forth as a separate motion and a vote on each of the amendments.

Motion/Vote: REP. SALES moved that HB 430 BE AMENDED. (Strike lines 12-18). Motion carried 10-8, by roll call vote, with REPS. CLARK, FACEY, GALLUS, RASER, GUTSCHE, HARRIS, NEWMAN, and PARKER voting no.

Motion/Vote: REP. SALES moved that HB 430 BE AMENDED. (Restore the original sentence.) Motion carried 11-7, by roll call vote, with REPS. FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, RASER, and SHOCKLEY voting no.

Motion/Vote: REP. SALES moved that HB 430 BE AMENDED. (Strike Section 3.) Motion failed 6-12, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, RICE, STOKER and SALES voting aye.

*{Tape: 3; Side: B; Approx. Time Counter: 285 - 514}*

Motion/Vote: REP. RASER moved that HB 430 BE TABLED. Motion failed 7-11, by roll call vote, with REPS. CLARK, FACEY, GALLUS, PARKER, RASER, GUTSCHE, and NEWMAN voting yes.

Motion: REP. HARRIS moved that HB 430 DO PASS AS AMENDED.

Vote: Motion that HB 430 DO PASS AS AMENDED carried 10-8, by roll call vote, with REPS. CLARK, SALES, FACEY, GALLUS, NEWMAN, PARKER, RASER, and GUTSCHE voting no.

**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh32aad)